

## II. Remarks

In the office action, the examiner required restriction of the application under 35 U.S.C. 121 to one of the following inventions:

- I. Claims 1-27 (drawn to a heat exchanger); and
- II. Claims 28-32 (drawn to a method of using a heat exchanger).

Under MPEP § 806.05(h) product and process of use claims are considered distinct if either or both of the following can be shown: (1) the product as claimed can be used in a materially different way or (2) the process as claimed can be practiced with another materially different product.

In the instant case, the examiner asserts that the heat exchanger, as claimed, can be used in a materially different process. Particularly, the examiner asserts that high pressure, high temperature fluid could be flowed through the heat transfer chamber 108 while a low pressure, low temperature fluid could be flowed through the tubing. It is respectfully submitted that the heat exchanger as claimed cannot be used as suggested by the examiner. Introducing a high pressure, high temperature fluid into the heat transfer chamber would immediately result in a decrease in the pressure and temperature of that fluid. Accordingly, heat transfer from the high pressure, high temperature fluid to the low pressure, low temperature fluid would not occur and the heat exchanger would not function.

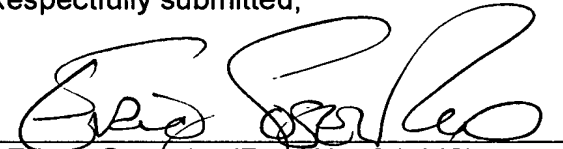
While the restriction requirement has been traversed as a result of the preceding discussion, in the event the examiner deems the restrictions requirement is not overcome, Applicant herein elects to prosecute this application with respect to the claims of Group I, claims 1-27.

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is requested.

Respectfully submitted,

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Date

  
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